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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,982	08/23/2001	John W. Evans	290397.0011	2268

21832 7590 11/17/2004

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EXAMINER	
HAMLIN, DERRICK G	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/935,982	EVANS ET AL.	
	Examiner	Art Unit	
	Derrick G. Hamlin	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *30-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *30-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 30-33 in the reply filed on 8/16/04 is acknowledged. No grounds for traversal have been provided; therefore the requirement is still deemed proper and is therefore made FINAL.

Response to Amendment

The rejection of claims 30-32, as being unpatentable over Meyers et al. (US 5118434), is withdrawn in view of the applicant's amendment.

The rejection of claims 30-33, as being unpatentable over Hansen (4,728,452), is withdrawn in view of the applicants amendment.

Applicant's arguments filed 8/16/04 have been fully considered but they are not persuasive with respect to the rejection of claims 30-32, as being unpatentable over Maes.

Response to Arguments

The rejection of claims 30-32, under 35 U.S.C. 103(a) as being anticipated and obvious in the alternative over Maes et al. (US 5366651), is maintained for the reasons set for in the office action mailed 8/16/04.

The applicant argues that the reference fails to teach the use of a non-aqueous heat transfer fluid and that the fluid is an "anti-freeze" and contains a "water soluble

liquid alcohol", However, Maes et al. (US 5366651) teaches an anti-freeze concentrate as well as an aqueous coolant composition. The anti-freeze contains a water-soluble liquid alcohol, not water and is therefore non-aqueous. Again, a mere statement of a new use for and old or obvious composition cannot render the claims to the composition patentable, *In re Zierden*, 162 USPQ 102. The applicant also argues that the US 5366651 A only discloses the use of 1 glycol material at a time. The reference clearly teaches that the antifreeze formulations most commonly used include mixtures of water and water-soluble liquid alcohol freezing point depressants.

The reference teaches that glycol depressants may be used and although The reference does not teach the use of more than one depressant in an inventive example, it does not require that only one be used.

The applicant also argues that the US 5366651 A only discloses the use of 1 glycol material at a time. The reference clearly teaches that the antifreeze formulations most commonly used include mixtures of water and water-soluble liquid alcohol freezing point depressants. The test for obviousness is what the teachings of a prior art reference as a whole would have suggested to one of ordinary skill in the art. ***See In re Young***, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). All of the disclosure of a prior art reference must be considered for what it would have fairly suggested to one of ordinary skill in the art. ***In re Lamberti***, 545 F.2d 747, 750, 192 USPQ 278, 280 (CCPA 1976). Such consideration is not limited to the specific details or examples described in the prior art reference. ***See In re Bascom***, 230 F.2d 612, 109 USPQ 98 (CCPA 1956). The fact that the Maes et al reference does not exemplify the

claimed composition containing two or more glycols does not negate obviousness. ***In re Lamberti, supra; In re Bascom, supra***.

The applicant argues that the reference fails to teach that an ADH enzyme inhibitor is added to an ethylene glycol in a concentration of at least 1% to reduce the oral toxicity, using propylene glycol or glycerol. The reference teaches that glycol depressants may be used. The reference does not teach the use of more than one depressant in an inventive example; it does not require that only one be used. Additionally, the reduction in oral toxicity is a feature that would be inherent as the compositions may be identical, alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to practice the instant method, as there would be a reasonable expectation of success to modify the prior art to arrive at the instantly claimed invention, as the prior art suggest mixing ethylene glycol with a propylene glycol which is an ADH enzyme inhibitor.

The applicant argues that the results are unexpected, however the examiner maintains that the compositions would inherently possess the same properties. The applicant has not demonstrated an unexpected result, but merely claims a property that is inherent in a previously used method.

Accordingly, the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick G. Hamlin whose telephone number is (571) 272-1317. The examiner can normally be reached on Monday-Fridays from ~8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick G. Hamlin

11/15/04

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